



# MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 34

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## VEHICLES USED IN INTERSTATE OR FOREIGN COMMERCE

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This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. It contains general and specific information of interest as well as interpretations and determinations by Maine Revenue Services regarding issues commonly faced by your business. Portions of the Sales and Use Tax Law referred to in this bulletin can be found at the end of the bulletin in Attachment #1. Also attached are applicable Sales and Use Tax Rules.

The Maine Sales and Use Tax Law provides an exemption from Maine sales or use tax for vehicles placed in use by the purchaser as an instrumentality of interstate or foreign commerce under certain conditions. For purposes of this bulletin, the word 'vehicle' includes motor vehicles, trailers, aircraft, watercraft and railroad rolling stock.

### 1. DEFINITIONS

**a. Use by the Purchaser.** A vehicle that is leased and used in interstate or foreign commerce is considered to be used by the lessee, not the purchaser, as an instrumentality of interstate or foreign commerce. Consequently, **leased vehicles, including leased vehicles that are operated by the lessor, are not exempt from sales or use tax under the provisions of 1760(41).**

**b. Use as an Instrumentality of Interstate or Foreign Commerce.** Use of a vehicle in intrastate and local operations is not use as an instrumentality of interstate or foreign commerce. Vehicles are considered to be used in intrastate or local operations when they are carrying cargo that both originates and terminates within the State of Maine.

**c. 80% of the Time for the Next 2 Years.** Time means a day or portion of a day during which the vehicle is actually being used to carry cargo or dispatched to a specific location for the purpose of being loaded with cargo. For example, if a vehicle carried cargo or was en route to be loaded with cargo during 500 days in the 2-year period following the date of purchase, it has met the 80% use requirement if during 400 of those days the cargo was in interstate or foreign commerce.

**d. Placed in Use within 30 Days.** The State Tax Assessor may for good cause extend by up to 60 days the time for placing the vehicle in use as an instrumentality of interstate

or foreign commerce. It is not necessary that the purchaser apply for the extension, but good cause must be documented in the records of the purchaser. Good cause does not exist when the extension is required because of the taxpayer's negligence or failure to make a good faith effort to place the vehicle in use in interstate or foreign commerce within 30 days from the date of purchase.

## **2. REPAIR PARTS, OPERATING SUPPLIES AND ACCESSORIES**

The exemption for instrumentalities of interstate or foreign commerce applies only to vehicles, railroad rolling stock, aircraft, and watercraft. Repair parts, operating supplies and accessories are not exempt. Accessories purchased as part of a vehicle are exempt from Maine sales or use tax if the vehicle qualifies for exemption. Accessories purchased separately from the vehicle are taxable.

So-called 'glider kits' are considered repair parts rather than vehicles. The purchase of a glider kit is subject to tax whether or not the vehicle on which it will be mounted is used by the purchaser as an instrumentality of interstate or foreign commerce.

## **3. AFFIDAVIT OF EXEMPTION**

**a. Purchases from Dealers in Maine.** If a vehicle purchased from a Maine registered retailer is claimed to be exempt as an instrumentality of interstate or foreign commerce, the seller is required to file with the Dealer's Supplemental Sales Report (Form STMV-8) on which the sale is claimed to be exempt, an affidavit properly completed and signed by both the seller and the purchaser. (A copy of the required affidavit is attached.) The dealer must indicate on the Dealer's Certificate (Form STMV-6) that the vehicle was sold exempt from tax as an instrumentality of interstate or foreign commerce.

**b. Purchases at Casual Sale or From Dealers Outside the State of Maine.** If the vehicle was purchased at casual sale or from a dealer outside this state, the purchaser must indicate on the use tax certificate filed with the registering agency at the time of registration that the vehicle is exempt as an instrumentality of interstate or foreign commerce. Maine Revenue Services may subsequently require the purchaser to complete and return an affidavit of exemption. Failure to return a properly completed affidavit of exemption when requested will subject the purchaser to the Maine use tax. (A copy of this affidavit is attached.)

**In order to be accepted, the affidavit must either indicate a currently valid ICC operating authority number issued to the person shown as the purchaser of the vehicle, or else provide a full and complete explanation of how the vehicle is used as an instrumentality of interstate or foreign commerce without an ICC number.**

If the purchaser later finds that the vehicle has become ineligible for the exemption because it was not placed in use as an instrumentality of interstate or foreign commerce within 30 days (90 days with good cause) or because it was not or will not be used 80% of the time as an

instrumentality of interstate or foreign commerce during the first 2 years from the date of purchase, the purchaser is responsible for reporting use tax directly to Maine Revenue Services. Payment of the use tax should be accompanied by a letter of explanation.

Purchasers who avoid payment of tax through deliberate misuse of the exemption certificate will be subject to prosecution.

#### **4. ADDITIONAL INFORMATION.**

The information in this bulletin addresses some of the more common questions regarding the Sales and Use Tax Law faced by your business. It is not intended to be all inclusive. Requests for information on specific situations should be in writing, should contain full information as to the transaction in question and should be directed to the:

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SALES, FUEL & SPECIAL TAX DIVISION  
P.O. BOX 1065  
AUGUSTA, ME 04332-1065  
TEL: (207) 624-9693  
TTY: (207) 287-4477**

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**ATTACHMENT #1**  
**Excerpts taken from 36 M.R.S.A.**

**36 §1752. Definitions**

The following words, terms and phrases when used in chapters 211 to 225 have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

**1-A. Aircraft.** "Aircraft" means any powered contrivance designed for navigation in the air except a rocket or missile.

**7-A. Vehicle.** "Vehicle" shall have the same meaning which is ascribed to that term by Title 29, section 1.

**24. Watercraft.** "Watercraft" means any type of vessel, boat, canoe or craft designed for use as a means of transportation on water, other than a seaplane, including motors, electronic and mechanical equipment and other machinery, whether permanently or temporarily attached, which are customarily used in the operations of the watercraft.

**36 §1760. Exemptions**

No tax on sales, storage or use shall be collected upon or in connection with:

**41. Certain instrumentalities of interstate or foreign commerce.** The sale of a vehicle, railroad rolling stock, aircraft or watercraft which is placed in use by the purchaser as an instrumentality of interstate or foreign commerce within 30 days after that sale and which is used by the purchaser not less than 80% of the time for the next 2 years as an instrumentality of interstate or foreign commerce. The State Tax Assessor may for good cause extend for not more than 60 days the time for placing the instrumentality in use in interstate or foreign commerce. For purposes of this subsection, property is "placed in use as an instrumentality of interstate or foreign commerce" by its carrying of, or providing the motive power for the carrying of, a bona fide payload in interstate or foreign commerce, or by being dispatched to a specific location at which it will be loaded upon arrival with, or will be used as motive power for the carrying of, a payload in interstate or foreign commerce. For purposes of this subsection, "bona fide payload" means a cargo of persons or property transported by a contract or common carrier for compensation which exceeds the direct cost of carrying that cargo or pursuant to a legal obligation to provide service as a public utility or a cargo of property transported in the reasonable conduct of the purchaser's own nontransportation business in interstate commerce.

**Relevant Rules:**

**#304 - Reports and Payment**

**#318 - Instrumentalities of Interstate or Foreign Commerce**